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08/828,005	03/27/1997	GARY DEAN LAVON	6563	4421

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EXAMINER

REICHLE, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/05/2003

38

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

08/828,005

Applicant(s)

LAVON ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11,12,17,20,32,33,37-39,43,44 and 82-89 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11,12,17,20,32,33,37-39,43,44 and 82-89 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 1997 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 17 July 2003 is: a) ☐ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

1. Claims 20, 32, 38-39, 82, 84 and 87-89 are no longer withdrawn from further consideration pursuant to 37 CFR 1.142(b).

#### ***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

#### ***Drawings***

3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 7-17-03 have been disapproved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Applicants' remarks on pages 13-18 of the 7-17-03 response have been noted as well as the proposed drawing corrections filed 7-17-03.

According to the Examiner's review, Figures 1-2 as filed 4-3-00, Figure 3 as originally filed, Figures 4-5 as filed 11-23-98, Figure 6 as originally filed, Figure 7 as filed 11-23-98, Figures 8-9 as originally filed, Figure 10 as filed 9-1-00, Figures 11-13 as originally filed,

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Figures 14-15 filed 9-1-01, Figure 16 as filed 11-23-98 and Figures 17-19 as originally filed were the Figures at the time the last Office Action was prepared.

However Applicants are correct in that the Figures and approved changes which are present in the application are confusing and the 7-17-03 proposed changes further exacerbate that confusion in that there are two Figures 3 and two Figures 4 presented and the proposed Figures, as well as the Figures in the application as of the last Office Action, are now inconsistent with the text as it was amended 7-17-03, e.g. 44', 42', 60'. Therefore the 7-17-03 proposed drawing changes have not been approved. Furthermore, in an effort to clarify the record, Applicant is requested to submit a master copy including all of Figures 1-19, as originally filed, showing all the approved drawing changes thereto from the entire prosecution of the application, as Applicants believe them to be (Note the preceding paragraph) as well as those submitted on 7-17-03 and excluding those changes which are no longer consistent with the textual description as now amended. Examiner will compare such to the originals and the textual description as now amended and approve such, barring any new matter, and, if necessary, make any remaining objections with regard to such copy. All prior approved changes will be canceled.

Therefore:

4. The drawings are objected to because Figures 3-8 use the same numerals as those used in Figures 1-2 but the structure denoted by such has been described as not being the same. For example, the structure shown as 60 in Figure 1 and that shown as 60 in Figure 3 is not the same, e.g. the structure shown in each further embodiment of what is shown in the Figures of 1 and 2

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could include numerals with an extra prime mark for each embodiment, e.g. 60, 60', 60", etc. In Figures 7-8 and 10, even Figure 10 as proposed 9-01-00 and approved, the numeral 55 is used to denote three different structures. The numeral 55 should be used to consistently denote only one structure. In Figure 8 the periphery 57 should be denoted. Also the Figures, e.g., Figures 1-2, and the text as now amended, e.g. the amendment to page 7, first three full paragraphs, are inconsistent, e.g. with respect to elements opening 41 and aperture 44. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Description***

5. It is noted that the abstract filed 7-17-03 and the amendments to page 12, line 24 filed 7-17-03 do not comply with revised 37 CFR 1.121 in that the text added has not been underlined and the text deleted has not been struck through. If a response to this action is filed, an abstract and amendments to page 12 in compliance with 37 CFR 1.121 should also be submitted.

6. The disclosure is objected to because of the following informalities: 1) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims should be commensurate in scope, see MPEP 608.01(d) and 1302.01. For example, there is no substantially fluid impervious backing sheet set forth in the Summary but it is claimed. 2) The written description as now amended should also be consistent with the Figures, see drawing objections supra. 3) On page 3, line 21, "reusable" should be deleted to be more consistent with

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the definition of "disposable" as amended on page 6 of the instant specification. 4) On line 5 of claim 11 as now amended Applicants claim a substantially fluid impervious backsheet yet on the last four lines of the claim Applicants claim a discontinuity in the backsheet, a flap and a fastener, i.e. the back sheet is not substantially fluid impervious backsheet. While the specification at page 7, amendment to line 2, second paragraph, second sentence thereof disclose a backsheet of substantially fluid impervious material which material has a discontinuity 44 which is sealed by a flap with releasable adhesive for providing fluid impermeability of the backsheet when closed, this is not what is claimed, i.e. where are like features claimed in claim 11? It is also noted that such described features are not shown. If Applicants are claiming some other structure, where is such disclosed, i.e. supported? A consistent description of the invention which is supported by the originally filed specification should be set forth.

7. The amendment filed 7-17-03 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The amendments to page 12, line 24, lines 4 et seq thereof.

Applicant is required to cancel the new matter in the reply to this Office Action.

While the originally filed specification at, e.g., page 3, lines 13-21 and the paragraph bridging pages 12-13 disclose removable or replaceable components and the sheets and core being assembled in a variety of well known configurations, where is it disclosed that a component when not replaced or not removed is "made" nonremovable or nonreplaceable as now

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set forth, i.e. can not be removed rather than capable of removal or nonremoval and not removed, i.e. immobilized? Where are DesMarais '345 and Osborn '264 incorporated with regard to the core attachment as set forth? Any response should include specific reference to the page and line number where the support for the added material can be located? Contrary to Applicants' remarks in the last paragraph on page 19 have been considered but are deemed nonpersuasive in that the incorporated references do not teach the added specifics with regard to the components of the instant absorbent since they do not teach components which are removable/nonremovable. Note that page 3, lines 13-21 are not limited to only the second and third components being removable or replaceable but rather "absorbent core components", i.e. includes the first component also.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

8. Claims 11-12, 17, 20, 32-33, 37-39, 43-44, and 82-89 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 11, the backsheet as set forth on line 5 and that in the last section appears to be inconsistent, i.e. is the backsheet fluid impermeable or not due to the discontinuity?

***Claim Language Interpretation***

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9. The following comments or observations are made with regard to the claim language:

It is noted that the "means for" language on lines 14-18 of claim 11 and lines 4-7 of claim 33 does not invoke 35 USC 112, sixth paragraph because such is modified by sufficient structure, material, or acts for achieving the specified function on lines 14 et seq and 6 et seq of the respective claims. It is further noted that the first core component is not limited to a single acquisition layer and a single acquisition/distribution layer and that the acquisition layer is not limited to only an acquisition function, i.e. could be another acquisition/distribution layer. Nor are the layers of the first core required to be in a specific sequence. It is also noted that the second and third core components are not limited to a single layer or specific sequence either. It is also noted that the components as claimed are not required to be different inserts but could be parts of the same insert or different inserts. The claims set forth removable second and third core components. Regardless of the amendments to the specification discussed supra, as claimed the first component still could or could not be removable because the claim does not require the first component being made nonremoval or immobilized and the specification at, for example, page 3, lines 13-26 and page 12 does not require structure preventing nonremoval, i.e. it can be a capability rather than a structural limitation since removal is determined by the user who can or cannot remove as desired as there is no structure claimed which prevents removal. It is noted that the components are not limited to the crotch, first waist region or second waist region respectively, i.e. each component could extend from waist region to waist region. It is noted that



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the removal of the various components is not limited to the specified access means, e.g. the second component could be removed through the second access means.

*Allowable Subject Matter*

10. The claims patentably distinguish over the prior art references, alone or in any combination because, as best understood, the claims require a fluid impervious backsheet yet have a discontinuity therethrough, a reclosable flap and a first fastener as claimed in the last subsection of claim 11 in combination with the other features of the claim.

*Response to Arguments*

11. Applicants remarks have been carefully considered but are either deemed moot in that the issues have not been reraised or are deemed nonpersuasive for the reasons set forth supra or have been already been addressed supra.

*Conclusion*

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claim 11 and the specification.


13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to K. M. Reichle whose telephone number is 703-308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo, can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is 703-308-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

KMR

October 29, 2003

  
KARIN REICHLE  
PATENT EXAMINER